

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH,

ALLAHABAD.

Order dated 18th July

O.A.No.662/88

Shri Kamlesh Babu

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Applicant

(None)

Vs.

1. Superintendent of
Post Offices,
Etawah Division,
Etawah.

2. Asstt. Supdt. of
Post Offices,
Auraiya Sub-Dvn.,
Auraiya,
Dist. Etawah.

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Respondents

(By Kum. Sadhana
Srivastava,
Counsel)

HON'BLE MR.JUSTICE B.C. SAKSENA, VICE-CHAIRMAN.

HON'BLE MR. K. MUTHU KUMAR, ADMINISTRATIVE MEMBER.

J U D G M E N T.

(By Hon.Mr.Justice B.C.Saksena, V.C.)

By means of this O.A. the applicant challenges the order dated 24-8-1987 issued by the Assistant Superintendent of Post Offices, Auraiya, Sub-Division Auraiya, District Etawah, removing the petitioner from the post of Extra Departmental Post Man, as also the order dated 23-2-1988 passed by the Superintendent of Post Offices, Etawah Division, rejecting the appeal preferred by the applicant against the order of punishment of removal from service. A counter-affidavit

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was filed on behalf of the respondents. The applicant has not filed any rejoinder-affidavit.

2. The case was listed on several dates, as it appears from the order sheet. Learned counsel for the applicant did not appear on several dates as also on the date of hearing. We have heard Kum. Sadhana Srivastava, who appeared on behalf of the respondents.

3. Briefly stated the facts of the case of the applicant are that he was appointed as Extra Departmental Branch Post-Man in the year 1972. By an order dated 1-12-1984 he was put off duty. Thereafter disciplinary proceedings were initiated against the applicant. On 8-8-1985 a charge-sheet was issued to him. Two allegations were levelled against the applicant:-

(1) that he failed to visit Village Purshottampur from 24-12-1983 to 9-4-1984.

(2) that on 21-11-1984 the applicant had thrown away the post inspite of distributing it and that on 29-11-84 he had not distributed the post in time.

4. The applicant filed a reply to the charge-sheet denying the charges. One Shri Daya Krishna Yadava, Inspector of Post Offices, Etawa Division, was appointed to act as Enquiry Officer. The Enquiry Officer found the charges proved and accepting the said report, the Assistant Supdt. of Post Offices passed an order dated 9-8-1987 removing the applicant from service. The applicant's

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appeal was allowed by the appellate authority by his order dated 18-6-1987 holding that the order of punishment had been passed without any discussion on evidence and the disciplinary authority had awarded the punishment in a summary manner. The proceedings were remitted back to the disciplinary authority for denovo trial from the stage of examination of the enquiry report. On 24-7-1984, a fresh order was passed by the Assistant Superintendent of Post Offices, a copy of the same is annexed as Annexure-3. After detailed discussion of the evidence on record, the disciplinary authority came to the conclusion that the allegations were serious and thus directed removal of the applicant from service.

5. The appeal against the said order was rejected by order dated 23-2-1988.

6. While discussing the ground of challenge indicated in the O.A., we will refer to the pleadings of the respondents in their counter-affidavit. The following main points have been raised by the applicant :-

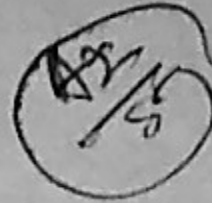
- (1) that prior to initiation of disciplinary proceedings, a preliminary enquiry had been conducted on 29-11-1984 against the applicant by Shri T.R. Ahirwar, the then Inspector of Post Offices. Disciplinary proceedings were also initiated on the basis of the said enquiry, but at no stage a copy of the preliminary enquiry report was made available to the petitioner and thus

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it is pleaded that the disciplinary proceedings stand vitiated.

- (2) that during the enquiry proceedings the said Shri T.R. Ahirwar appeared as a witness against the applicant. Shri Ahirwar had issued charge-sheet and thus the disciplinary proceedings have been vitiated since the said Shri T.R. Ahirwar acted as enquiry Officer, as a witness and also as disciplinary authority.
- (3) A plea of denial of reasonable opportunity has also been raised alleging that the applicant had given names of six persons whom he wanted to produce as witnesses to cross-examine and had also asked for production of six documents, but only one document had been permitted and three witnesses were cross-examined. The request regarding the remaining documents and the witnesses was refused by the enquiry officer through his order dated 13-1-1986.
- (4) The enquiry proceedings are alleged to be vitiated by reasons of the fact that the presenting officer was permitted by the enquiry officer to produce three new witnesses viz. Shri T.R. Ahirwar, Shri Subedar Jatav and Shri Gorey Lal, whose names have not been indicated in the charge-sheet.
- (5) The other ground taken is that at the time of examination of Shri T.R. Ahirwar on



8-8-1986, he produced the statement of one Sri Chet Ram which was accepted on the record and marked as Exh. K-12. The said Sri Chet Ram never appeared as witness during the enquiry proceedings. In fact his statement was taken behind the back of the applicant during the enquiry proceedings.

(6) the order of punishment is without jurisdiction since in the year 1972 the applicant was appointed by the Inspector of Post Offices. It is, therefore, alleged that the appointing authority as well as the disciplinary authority of the applicant was only the Inspector of Post Offices and the Assistant Superintendent of Post Offices has passed the order of punishment without jurisdiction.

(7) It is further pleaded that the appellate order was a non-speaking order.

7. In the counter-affidavit a detailed reply to the alleged facts constituting the basis for the above-noted pleas taken by the applicant in the O.A. have been given :-

(1) It is not disputed that Shri T.R. Ahirwar was the Sub-Divisional Inspector of Post Offices at the relevant time. He had passed the order putting the applicant off duty on the basis of the facts which came to light during preliminary enquiry.

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- (2) It is further not disputed that Shri T.R. Ahirwar was examined as a witness. It is pleaded that he was a formal witness and not a material witness and that it does not debar him from issuing charge-sheet. The order of punishment has been passed by the Assistant Supdt. of Post Offices, Auraiya, Etawah, Shri V.D. Sharma. It is denied that Shri Ahirwar was the enquiry officer in the disciplinary proceedings. The enquiry officer was Shri D. K. Yadava, Sub-Divisional Inspector, Etawah.
- (3) The request for documents and witnesses was duly considered by the enquiry officer and he, for the reasons contained in his order dated 13-1-1986, had refused to summon the witnesses and the documents. ~~As far as the examination of additional~~ *Per*
- (4) As far as the examination of additional witnesses are concerned during the course of enquiry, the respondents' plea is that the same was allowed as per the provisions of the Rule. The applicant had not raised any objection. Moreover, the applicant gave his consent for the production of the additional witnesses as shown in the daily sheet dated 18-3-1986, a copy of the same has been annexed as Annexure 5 to the C.A.
- (5) It has been pleaded that the post of Inspector of Post Offices had been upgraded and now they are called Assistant Superintendent of Post

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Offices. As per the Extra-Departmental Agents (Conduct and Service Rules, 1964) the disciplinary authority is the Assistant Superintendent of Post Offices and as such the order of punishment was passed by a competent authority.

8. Since the factual basis for the pleas taken by the applicant in the O.A. have been satisfactorily answered, we are of the opinion that there is no merit in any of the pleas taken. According to the applicant also his immediate officer was Shri T.R. Ahirwar. Consequently we do not find any error in his passing the order for putting the applicant off duty on the basis of the preliminary conclusions. No doubt, charge-sheet appears to have been issued by Shri T.R. Ahirwar, but it has not been indicated that he was not competent to do so. The respondents, in their counter affidavit, have averred as indicated herein above, that under the relevant service rules the disciplinary authority is Assistant Superintendent of Post Offices and thus the order of punishment of removal from service cannot be held to be by an authority who is not competent. The enquiry officer's report is on record and it gives cogent reasons to support the conclusion that the allegations against the applicant are proved. The appellate authority has also dealt in detail with all the pleas advanced by the applicant in his appeal and has given clear and cogent reasons to show that the pleas are untenable and founded on incorrect assumptions of facts. A perusal of the appellate order shows that virtually the very same pleas which had been taken by the applicant in his appeal

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have been raised in the O.A. All the said pleas have been duly considered and met by the appellate authority. We do not see any infirmity in the proceedings. The O.A. is accordingly dismissed. There will be no order as to costs.

ADMINISTRATIVE MEMBER.

VICE-CHAIRMAN.

Dated: 18/7/94, Allahabad.

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